

1 Q. Re: GRK-NLH-021 rev. 1, GRK-NLH-022

2 Citation 1 (GRK-NLH-021 rev. 1):

3 If Nalcor's interpretation of the renewal of the Churchill Falls  
4 Contract is not upheld, then depending on the finding of the court  
5 and the response by Hydro Quebec to such finding, the manner in  
6 which water will flow down the Churchill River from the Churchill  
7 Falls plant and thus the timing of when energy is produced at  
8 Muskrat Falls could be impacted. It could therefore impact the  
9 degree which Hydro can influence the timing of delivery of energy to  
10 the Island Interconnected System ...

11 Citation 2 (GRK-NLH-022):

12 The overall power available from Muskrat Falls is unaffected by a different  
13 interpretation of the power contract renewal in 2016.

14 Citation 3 (CF(L)CO'S DEFENCE TO HYDRO-QUEBEC'S INTRODUCTORY MOTION  
15 FOR DECLARATORY JUDGMENT, pp. 12 and 13):

16 1- INTRODUCTION

17 A. The essence of the dispute between the parties

18 131. What are the respective rights and obligations of the owner and operator  
19 of a power plant and its customer under a power purchase agreement  
20 negotiated more than 45 years ago, which will come into force on  
21 September 1, 2016?

22 132. As holder of the hydraulic rights, and owner and operator of the Churchill  
23 Falls power plant, CF(L)Co asserts that the amount of power and energy to  
24 which its customer Hydro-Quebec is entitled and the conditions for  
25 delivery of that power and energy are strictly those defined by the terms  
26 and conditions of that contract, which will fully replace and supersede the  
27 present agreement between the parties, which expires on August 31,

1 2016.

2 ...

3 139. Simply put, Hydro-Quebec is only entitled to the rights that have been  
4 dearly delineated and circumscribed by the terms and conditions of the  
5 Renewal Contract, nothing more, nothing less.

6 140. Conversely, as holder of the hydraulic rights and owner of the power  
7 plant responsible for operating the plant, CF(L)Co enjoys the universality  
8 of rights that have not been limited by way of agreements with its  
9 customers and is free to dispose of such rights as it sees fit, provided it  
10 respects the terms and provisions of the contracts that have been  
11 entered into with its customers, including Hydro- Quebec.

12 141. It is CF(L)Co, not Hydro-Quebec, which is entitled to the entire actual and  
13 potential capacity and energy of the Churchill Falls power plant. except  
14 for those specific amounts of capacity and energy that are requested by  
15 and made available to Hydro-Quebec pursuant to the terms and  
16 conditions of the Renewal Contract. (underlining added)

17 **Citation 4 (Nalcor Water Management Application, p. 5-6)**

18 **2.2.1 HQ Power Contract**

19 CF(L)Co sells approximately 85% of the energy produced at Churchill Falls to HQ  
20 pursuant to an agreement dated May 12, 1969 (the HQ Power Contract) (Exhibit  
21 3). The HQ Power Contract has an initial term that runs to August 31, 2016.  
22 Thereafter, the HQ Power Contract is renewed for a further term of 25 years  
23 from September 1, 2016 to August 31, 2041 in accordance with Schedule III to  
24 the contract. The contract provides for 4,083 MW of firm capacity in winter and  
25 3,864 MW in summer, after accounting for power and energy recalled for sale to  
26 Hydro. Energy entitlements are derived from a periodic assessment of historic  
27 sales, spillage and reservoir elevation readings. The value derived from this  
28 assessment, called the Annual Energy Base (AEB) will be fixed for the renewal

1 period of the contract. Schedule III to the HQ Power Contract alters the manner  
2 in which the AEB will be supplied to HQ by CF(L)Co. Upon renewal, HQ will  
3 become entitled to receive Continuous Energy, defined in Schedule III, Article 1.1  
4 (II) as follows:

5 **"Continuous Energy"** means, in respect of any month, the number of  
6 kilowatt-hours obtainable, calculated to the nearest 1/100 of a billion  
7 kilowatt-hours, when the Annual Energy Base is multiplied by the number  
8 which corresponds to the number of days in the month concerned and the  
9 result is then divided by the number which corresponds to the number of  
10 days in the year concerned.

11 Annual Energy Base is also defined in Schedule III, Article 1.1 (II) as follows:

12 **"Annual Energy Base"** means the number of kilowatt-hours per year  
13 represented by the Annual Energy Base in effect at the time of expiry of the  
14 Power Contract which is hereby renewed.

15 As a result, HQ will be entitled to essentially equal amounts of energy during  
16 each month after renewal. However, HQ will remain entitled to schedule the  
17 hourly deliveries of its monthly entitlement of Continuous Energy at any time  
18 during the month. (underlining added)

19 **Citation 5 (Nalcor Water Management Application, p. 27, lines 10-14)**

20 Energy produced by Nalcor in its facilities to meet CF(L)Co's delivery  
21 requirements is proposed to be credited to Nalcor in the CF(L)Co reservoir  
22 system. When the production schedule calls for CF(L)Co to produce power to  
23 meet Nalcor's delivery requirements, the accumulated volume banked by Nalcor  
24 in CF(L)Co's reservoirs will be reduced. The converse is also true at lower  
25 Churchill.

26 **Preamble:**

27 Citation 3 describes, in Nalcor's terms, the essence of the dispute between it and  
28 Hydro-Quebec. In paragraph 141, it explains that it, and not Hydro-Quebec, is

1 entitled to the entire actual and potential capacity and energy of the Churchill  
2 Falls power plant, except for the specific amounts of power and energy  
3 requested by and made available to HQ under the Renewal Contract. Citation 4  
4 describes Nalcor's understanding of Hydro-Quebec's rights under the Renewal  
5 Contract. Citation 5 indicates that, under the WMA, CF(L)Co may be called  
6 upon to produce power to meet Nalcor's delivery requirements.

7 **Please confirm that the effects on the operation of the WMA, should Hydro-**  
8 **Quebec's interpretation of the Renewal Contract be endorsed by the Courts,**  
9 **could include the following:**

- 10 a) **That HQ would not be limited to "essentially equal amounts of energy**  
11 **during each month after renewal" (Citation 3), but would continue to be**  
12 **able to schedule its power deliveries from Churchill Falls as it sees fit;**  
13 b) **That HQ, and not CF(L)Co, would be "entitled to the entire actual and**  
14 **potential capacity and energy of the Churchill Falls power plant, except for**  
15 **those specific amounts of capacity and energy that are specifically**  
16 **attributed to CF(L)Co under the various contracts in force; and**  
17 c) **That, consequently, requests from Nalcor "to produce power to meet**  
18 **Nalcor's delivery requirements" (Citation 5) could come into conflict with**  
19 **CF(L)Co's contractual obligation to Hydro-Quebec.**

20 **Please elaborate on the implications for the reliability of MFC's deliveries to NLH**  
21 **in the event of each of these eventualities.**

- 22  
23  
24 A. This Request for Information requires that Hydro respond to potential hypothetical  
25 scenarios "should Hydro-Quebec's interpretation of the Renewal Contract be  
26 endorsed by the Courts."

1 As stated in Board Order No. P.U. 41(2014) at page 23:

2

3 The Board notes that GRK-NLH-23 requires that Hydro  
4 assume alternate circumstances for 2012 and create new  
5 information. The Board does not believe it is reasonable to  
6 require Hydro to create information based on a hypothetical  
7 scenario as it is not clear how it would be of assistance and  
8 may be an undue burden to produce.

9

10 Further, in that same Order at page 14, the Board noted in a separate context that  
11 addressing possible alternative approaches is “not relevant or necessary to address  
12 the matters before the Board and would serve to unduly complicate and protract  
13 this investigation”.

14

15 Hydro does not believe it is relevant or appropriate to respond to the implications  
16 of hypothetical scenarios and believes that the provision of such responses would  
17 unduly complicate the proceeding.